

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Edwin Henry,

Plaintiff,

v.

Wal-Mart Stores, Inc.,

Defendant.

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:
: Civil Action No.: 4:13-cv-03253
:
:
:

:
: **COMPLAINT**
: **JURY**
:
:
:

For this Complaint, Plaintiff, Edwin Henry, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. Plaintiff, Edwin Henry ("Plaintiff"), is an adult individual residing in Galena Park, Texas and is a "person" as defined by 47 U.S.C. § 153(10).
4. Defendant, Wal-Mart Stores, Inc. ("Wal-Mart"), is an Arkansas business entity with an address of 702 S.W. 8th Street, Bentonville, Arkansas 72716, and is a "person" as defined by 47 U.S.C. § 153(10).

FACTS

5. In or around January 2013, Plaintiff called his regional Wal-Mart store and requested that his cellular telephone number be removed from Defendant's prescription refill call list.

6. Plaintiff also called Defendant's corporate office and requested that his number be removed from the call list.

7. Nonetheless, Defendant continued to call Plaintiff's cellular telephone up to three (3) times per day.

8. At all times mentioned herein, Defendant placed calls to Plaintiff using an automatic telephone dialing system ("ATDS") with an artificial or prerecorded voice.

9. When answering Defendant's telephone calls, Plaintiff heard a prerecorded message reminding Plaintiff to get his prescription filled.

10. The calls from Defendant originated from several telephone numbers, including but not limited to, (866) 575-4108.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

11. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. Without express consent, Defendants contacted Plaintiff by means of automated telephone calls on his cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii). As such, each call placed to Plaintiff is a knowing and/or willful violation of the TCPA, and is therefore subject to treble damages of \$1,500.00 per call pursuant to 47 U.S.C. § 227(b)(3)(C).

13. In the alternative, as a result of each negligent call made in violation of the TCPA, Plaintiff is entitled to an award of \$500.00 for each call pursuant to 47 U.S.C. § 227(b)(3)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful or intentional pursuant to 47 U.S.C. § 227(b)(3)(C);
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: November 5, 2013

Respectfully submitted,

By: /s/ Jody B. Burton

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